

From: [Wilcox, Gwynne](#)
To: [Burow, Kathy](#)
Subject: Two Questions
Date: Wednesday, August 25, 2021 12:38:16 PM

Kathy-

Good Morning!

I hope you are doing well. I was hoping to give you a break today, but it seems not possible. Well, I am on my way to headquarters this morning so I am excited to see my new place of work. I will there for the rest of the week. If we don't see each other this time, I hope to meet you in person in September.

I have 2 cases that I need to address with you concerning potential recusal concerns.

(b) (5)



Gwynne

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: Member Prouty's participation in a litigation vote
Date: Thursday, November 18, 2021 3:09:13 PM

Relevant to NLRB-2022-000150

From: Burow, Kathy <Kathy.Burow@nlrb.gov>
Sent: Friday, September 17, 2021 11:58 AM
To: Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>
Cc: SM-Ethics <ethics@nlrb.gov>; Jacob, Fred <Fred.Jacob@nlrb.gov>
Subject: RE: Member Prouty's participation in a litigation vote


Good Morning Amy
Member Prouty does not have a financial interest that would require his recusal from this case.

Thanks
Kathy

From: Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>
Sent: Friday, September 17, 2021 9:57 AM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>
Cc: SM-Ethics <ethics@nlrb.gov>; Jacob, Fred <Fred.Jacob@nlrb.gov>
Subject: Member Prouty's participation in a litigation vote

Hi Ethics folk —

(b) (5)




Could you let us know whether Member Prouty is cleared to participate in this matter at your earliest convenience? Please let me know if you need any other information.

Many thanks,
Amy

Amy L. Cocuzza (she/her/hers)
Deputy Solicitor
National Labor Relations Board
202-273-1735 (office)
202-674-1617 (mobile)
amy.cocuzza@nlrb.gov

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(b) (5)

A large black rectangular redaction box covers the signature area, with the text "(b) (5)" visible at the top left corner.

Sincerely,

Jamal M. Allen
Special Ethics Counsel

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: Planned Building Services Inc. (Member Wilcox)
Date: Thursday, November 18, 2021 2:22:47 PM

Relevant to NLRB-2022-000150

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Wednesday, September 22, 2021 5:35 PM
To: Allen, Jamal <Jamal.Allen@nlrb.gov>
Cc: Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>
Subject: RE: Planned Building Services Inc. (Member Wilcox)

Jamal—

Thank you for your email and memo. I look forward to reviewing it.

Have a good evening!

Gwynne

From: Allen, Jamal <[Jamal.Allen@nlrb.gov](#)>
Sent: Wednesday, September 22, 2021 5:31 PM
To: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>
Cc: Jaret, Amanda M. <[Amanda.Jaret@nlrb.gov](#)>; Rothschild, Roxanne L. <[Roxanne.Rothschild@nlrb.gov](#)>; Ketcham, Lori <[Lori.Ketcham@nlrb.gov](#)>; Burow, Kathy <[Kathy.Burow@nlrb.gov](#)>
Subject: Planned Building Services Inc. (Member Wilcox)

Dear Member Wilcox, attached to this email is a memo that memorializes (b) (5) guidance the Ethics Office previously provided to Chief Counsel Amanda Jaret in this case.

Please let us know if we can be of further assistance.

Sincerely,

Jamal M. Allen
Special Ethics Counsel

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: Health Alliance Hospital Mary's Avenue Campus, Case No. 03-CA-262661
Date: Thursday, November 18, 2021 3:12:55 PM
Attachments: [Health Alliance Hospital Mary's Avenue Campus \(September 23, 2021\).docx](#)

Relevant to NLRB-2022-000150

From: Hilerio-Echevarria, Celeste <Celeste.Hilerio-Echevarria@nlrb.gov>
Sent: Thursday, September 23, 2021 11:10 AM
To: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Cc: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: Health Alliance Hospital Mary's Avenue Campus, Case No. 03-CA-262661

Member Wilcox,

The attached memorandum follows up on (b) (5) guidance we provided on September 3, 2021.

Please let us know if you have any questions.

Thanks,

Celeste

Celeste Hilerio Echevarria

Special Ethics Counsel
Office of the General Counsel, Ethics Office
National Labor Relations Board
Office: (202) 273-0071
Mobile: (202) 679-2244
chilerio@nlrb.gov

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: SEIU v NLRB
Date: Thursday, November 18, 2021 2:05:06 PM

Relevant to NLRB-2022-000150

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Thursday, September 23, 2021 3:53 PM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Subject: RE: SEIU v NLRB

Lori-

Thank you for your question. You are correct that my answer is no to your questions.

Gwynne

From: Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Sent: Thursday, September 23, 2021 3:10 PM
To: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Subject: RE: SEIU v NLRB

Gwynne – Jamal and I are gathering some information that we need to answer your recusal question. In the meantime, for a starting point, I wanted to ask you whether you had any input into the preparation of SEIU International’s lawsuit against the NLRB. Were you consulted about it, asked to read drafts of the complaint, etc?

I assume that the answer is no, but it’s always good to spell things out so we don’t miss anything.

Thanks,
Lori

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Wednesday, September 22, 2021 12:58 PM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>
Cc: Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>
Subject: SEIU v NLRB

Lori and Kathy—

I hope your day is going well.

I am sure this email is of no surprise to you. I am reaching out to you because of the new lawsuit

filed by SEIU against the NLRB regarding the Board's 2020 Joint Employer Rule Making. Each of the Board Members have been individually named in our official capacity, even though as you know I was not on the Board in 2020. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Thank you for your guidance and assistance.

Gwynne

Gwynne A. Wilcox

Member, National Labor Relations Board

(she/her/hers)

1015 Half Street, SE

Washington, DC 20570

<https://www.nlr.gov>

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From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: SEIU v. NLRB
Date: Thursday, November 18, 2021 2:21:53 PM

Relevant to NLRB-2022-000150

From: Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>
Sent: Friday, October 1, 2021 4:47 PM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Cc: Allen, Jamal <Jamal.Allen@nlrb.gov>
Subject: RE: SEIU v. NLRB

Hi Lori,

Thanks very much for getting back to us regarding this question. We look forward to finding a time to talk with Jamal next week. (b) (5)

(b) (5) Since you will be on annual leave, we understand we may not have an answer in time, (b) (5)

Thanks again,
Amanda

From: Ketcham, Lori <[Lori.Ketcham@nlrb.gov](#)>
Sent: Friday, October 1, 2021 10:50 AM
To: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>; Jaret, Amanda M. <[Amanda.Jaret@nlrb.gov](#)>
Cc: Allen, Jamal <[Jamal.Allen@nlrb.gov](#)>
Subject: SEIU v. NLRB

Gwynne and Amanda – I am going to be on annual leave next week, (b) (5)

Jamal will set up a time to talk with you both next week (b) (5)

Were you given a timeframe as to when the Board would begin working on its response to the litigation?

Thank you,
Lori

Lori W. Ketcham
Associate General Counsel, Ethics

Designated Agency Ethics Official

National Labor Relations Board

1015 Half Street, S.E.

Washington, D.C. 20570

(202)273-2939

lori.ketcham@nrlb.gov

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From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: recusal demand
Date: Thursday, November 18, 2021 2:20:34 PM

Relevant to NLRB-2022-000150

From: Goldman, David <David.Goldman@nlrb.gov>
Sent: Wednesday, October 6, 2021 4:39 PM
To: Allen, Jamal <Jamal.Allen@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Subject: RE: recusal demand

Hi Jamal,

In answer to your question: Yes, Prouty did file comments on behalf of Local 32BJ regarding the joint employer rulemaking.

Thanks,

David

From: Allen, Jamal <[Jamal.Allen@nlrb.gov](#)>
Sent: Wednesday, October 6, 2021 4:17 PM
To: Goldman, David <[David.Goldman@nlrb.gov](#)>; Burow, Kathy <[Kathy.Burow@nlrb.gov](#)>; Ketcham, Lori <[Lori.Ketcham@nlrb.gov](#)>
Subject: RE: recusal demand

Hi David, as you aware one of the substantive arguments raised by the National Right to Work Legal Defense Foundation is that Mbr. Prouty, as a legal representative of SEIU, Local 32BJ, filed comments in response to the Board's solicitation of public input respecting the joint-employer rulemaking. (b) (5)

[REDACTED]

[REDACTED]

I would like a response though from you respecting the factual claim. The Foundation attached documents to their motion which they have represented are the comments filed by Mbr. Prouty as a SEIU, Local 32BJ employee (b) (5)

[REDACTED]

However, can you confirm that Mbr. Prouty did in fact file comments on the behalf of SEIU, Local 32BJ in connection with the Board's joint employer rulemaking?

We want to make sure that there are no factual disputes regarding that activity.

Sincerely,

Jamal M. Allen
Special Ethics Counsel

From: Goldman, David <David.Goldman@nlrb.gov>
Sent: Wednesday, October 6, 2021 8:30 AM
To: Burow, Kathy <Kathy.Burow@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Cc: Allen, Jamal <Jamal.Allen@nlrb.gov>
Subject: RE: recusal demand

Yes, thanks. I talked to Jamal yesterday, and understand (b) (5) Thanks.

From: Burow, Kathy <Kathy.Burow@nlrb.gov>
Sent: Wednesday, October 6, 2021 9:29 AM
To: Goldman, David <David.Goldman@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Cc: Allen, Jamal <Jamal.Allen@nlrb.gov>
Subject: RE: recusal demand

Good Morning David,
I assume that Lori may have confirmed receipt but in the event that you have not heard from her on this matter, we understand and we will reach out once we have had an opportunity to review.

Thanks
Kathy

From: Goldman, David <David.Goldman@nlrb.gov>
Sent: Tuesday, October 5, 2021 10:09 AM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>
Subject: recusal demand

Hi Lori and Kathy,

Could we discuss the attached your convenience. (b) (5)

[REDACTED]

Thanks,

David

From: [Ketcham, Lori](#)
To: [Prouty, David M.](#); [Wilcox, Gwynne](#)
Cc: [Goldman, David](#); [Zick, Lara S.](#); [Jaret, Amanda M.](#); [Burow, Kathy](#); [Allen, Jamal](#); [Rothschild, Roxanne L.](#)
Subject: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21
Date: Wednesday, October 13, 2021 11:32:11 AM
Attachments: [SEIU v. NLRB \(Mbr Wilcox Mbr. Prouty\) 10.13.21.docx](#)

Good Morning – I have attached a copy of our ethics memo that provides guidance as to whether Members Wilcox and Prouty may participate in the Board’s consideration of the lawsuit filed by SEIU International challenging the NLRB’s joint employer rule.

Please let us know if you have any questions.

Lori

Lori W. Ketcham

Associate General Counsel, Ethics

Designated Agency Ethics Official

National Labor Relations Board

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UNITED STATES GOVERNMENT
National Labor Relations Board
Memorandum



TO: Gwynne A. Wilcox, Board Member
David M. Prouty, Board Member

FROM: Lori Ketcham,
Associate General Counsel, Ethics
Designated Agency Ethics Official

Jamal M. Allen,
Special Ethics Counsel, Ethics
Alternate Designated Agency Ethics Official

SUBJECT: Service Employees International Union v. NLRB, Lauren McFerran, John Ring,
Marvin Kaplan, Gwynne Wilcox and David Prouty, Civil Action No. 21-2443

DATE: October 13, 2021

Executive Summary

This memo provides ethics guidance regarding whether Member Wilcox and/or Member Prouty may participate in the Board's consideration of how to respond to the lawsuit filed by the Service Employees International Union against the Board, and its individual members, challenging the NLRB's joint employer rule. As explained in more detail below, the Ethics Office has concluded that under both the relevant government and legal ethics provisions, Member Wilcox and Member Prouty do not have to recuse from consideration of the lawsuit. Additionally, the Ethics Office considered whether there are appearance concerns under the catch-all provision that would warrant recusal. Our recommendation is that Member Prouty's and Member Wilcox's participation would not raise appearance concerns.


Background

A. (b) (5), (b) (7)(A)


(b) (5), (b) (7)(A)

¹(b) (5), (b) (7)(A)


(b) (5), (b) (7)(A)




B. (b) (5), (b) (7)(A)




(b) (5), (b) (7)(A)




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c. (b) (5), (b) (7)(A)




(b) (5), (b) (7)(A)



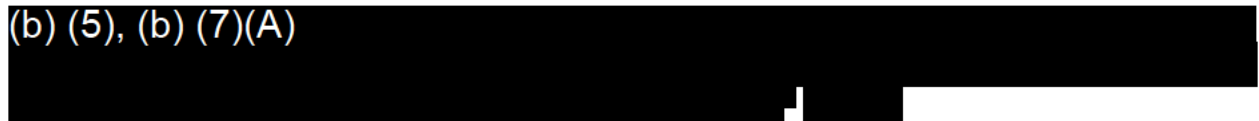
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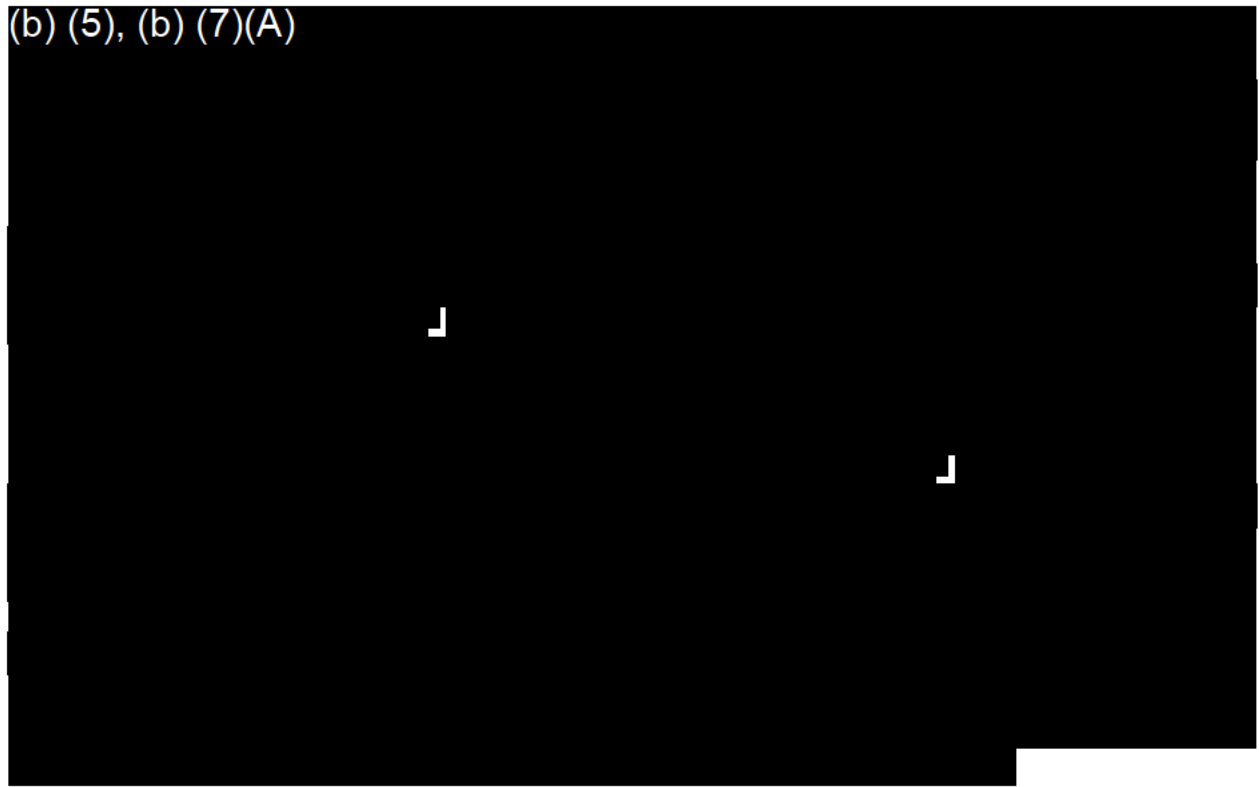
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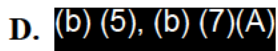
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D. (b) (5), (b) (7)(A)

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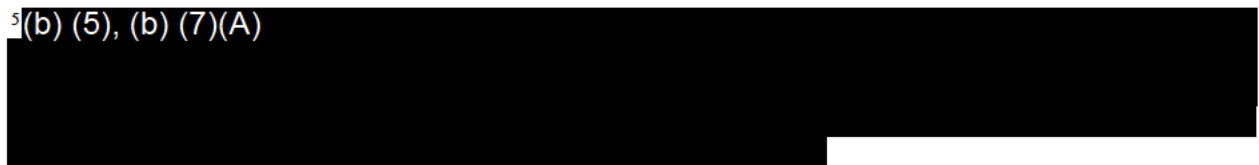
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(b) (5), (b) (7)(A)

E. (b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

Analysis

For purposes of our government ethics analysis, we have evaluated whether Member Wilcox and/or Member Prouty should be recused from participating in the litigation challenging the Board's joint employer rule under 18 U.S.C. § 208, which is the criminal conflict of interest statute covering conflicting financial interests; the Biden Ethics Pledge (Executive Order 13989); and the Standards of Ethical Conduct for Employees of the Executive Branch regulations (The Standards of Conduct) codified at 5 C.F.R. § 2635.502, covering outside business and personal relationships.⁷ Additionally, we have also considered whether recusal is warranted under the relevant legal ethics rules and as a matter of due process and prejudgment.

A. (b) (5), (b) (7)(A)

1. (b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

⁶ (b) (5), (b) (7)(A)

⁷ (b) (5), (b) (7)(A)

- (b) (5), (b) (7)(A)

- (b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

Accordingly, because their participation in the litigation would not create a financial conflict of interest, neither Member Wilcox nor Member Prouty must recuse under 18 U.S.C. § 208.

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(b) (5), (b) (7)(A)

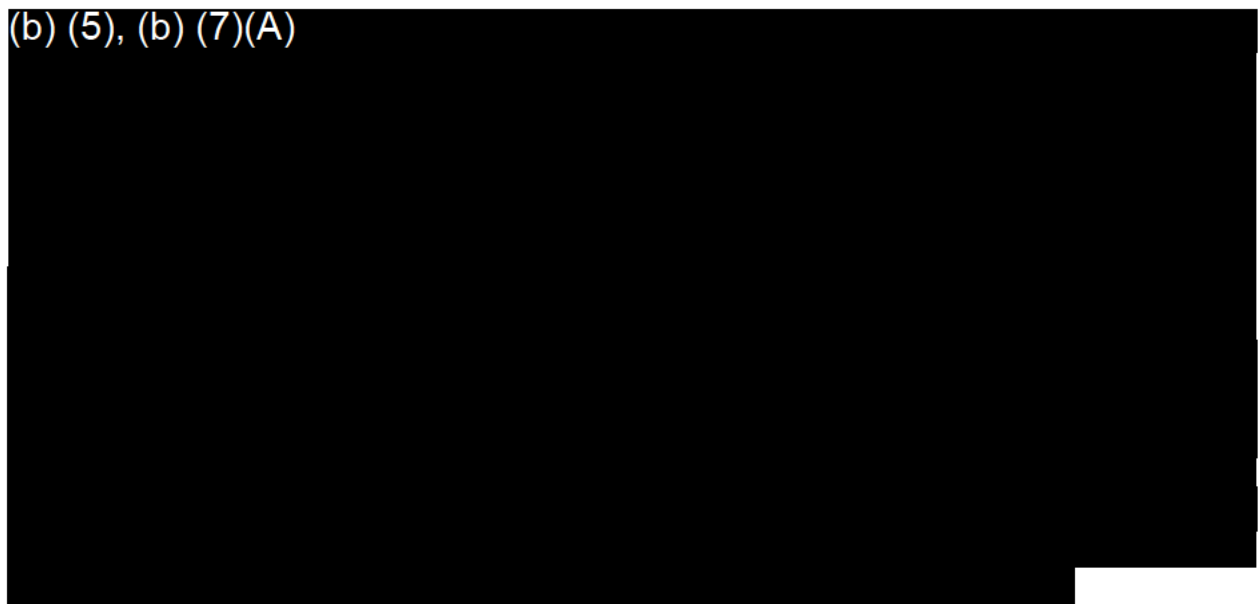
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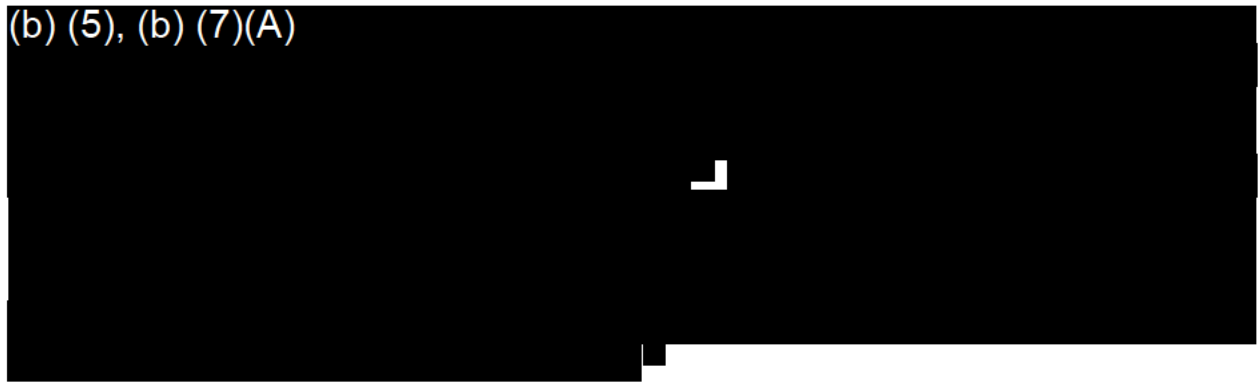
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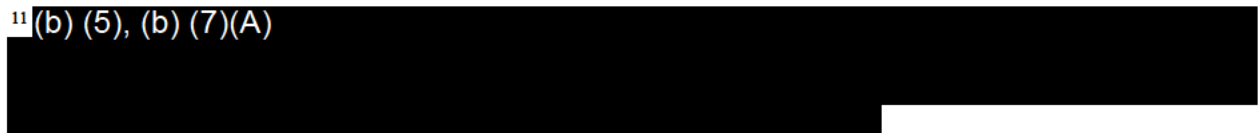
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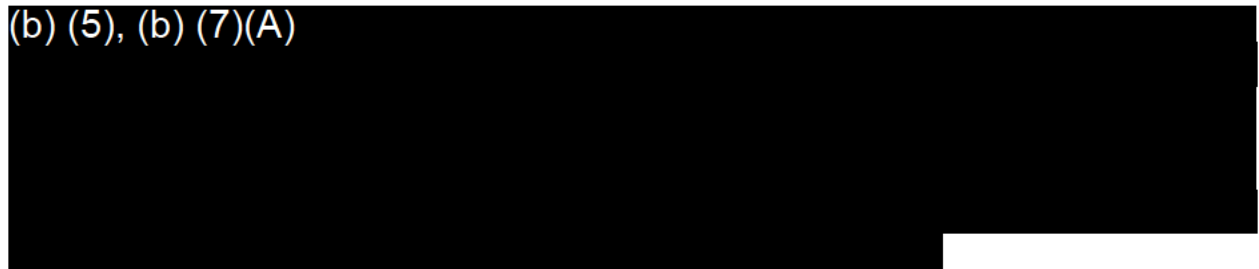
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¹¹(b) (5), (b) (7)(A)

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(b) (5), (b) (7)(A)

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(b) (5), (b) (7)(A) Members Wilcox and Prouty are not required to recuse from *SEIU v. NLRB* under the Biden Ethics Pledge.

3. (b) (5), (b) (7)(A)


(b) (5), (b) (7)(A)

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(b) (5), (b) (7)(A)




(a) (b) (5), (b) (7)(A)



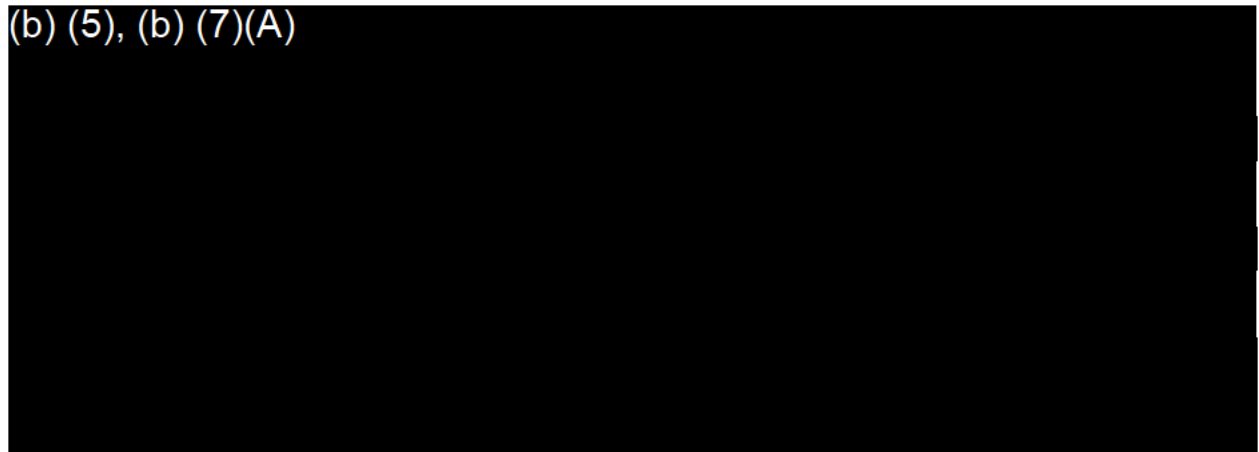
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(b) (5), (b) (7)(A)



¹²(b) (5), (b) (7)(A)



(b) (5), (b) (7)(A)

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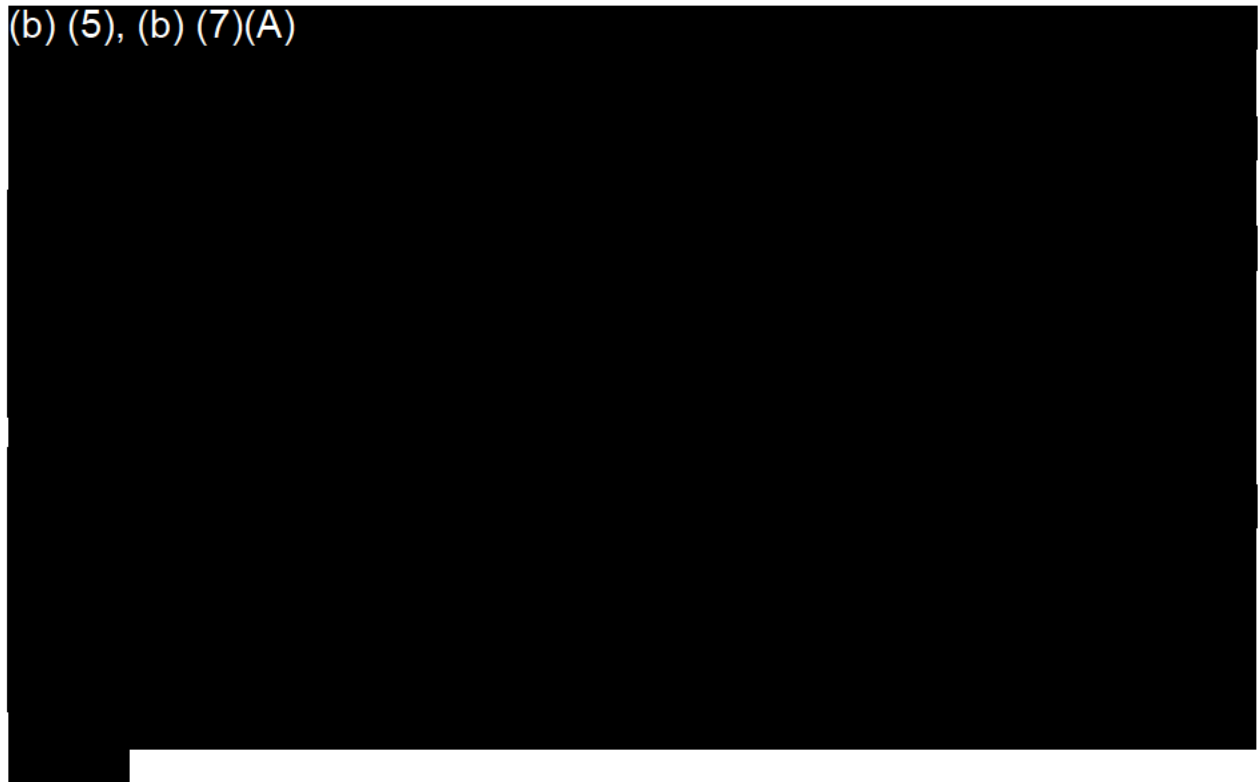
(b) (5), (b) (7)(A)

because Member Wilcox and Member Prouty have sought guidance from the Ethics Office, we have made an assessment and recommendation. (b) (5), (b) (7)(A)


(b) (5), (b) (7)(A)

¹³ (b) (5), (b) (7)(A)

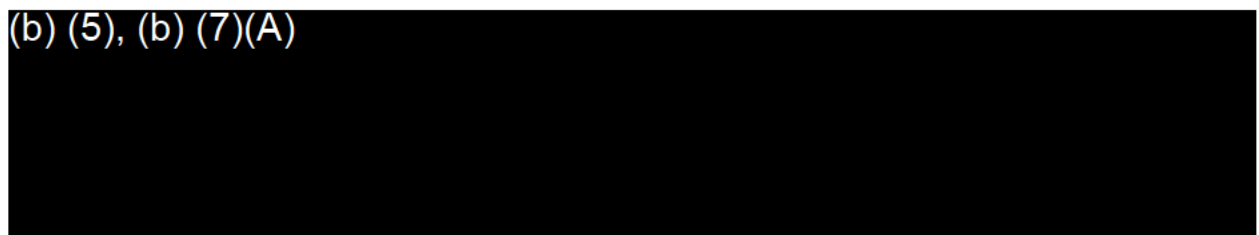
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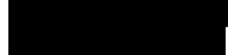
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¹⁴(b) (5), (b) (7)(A)



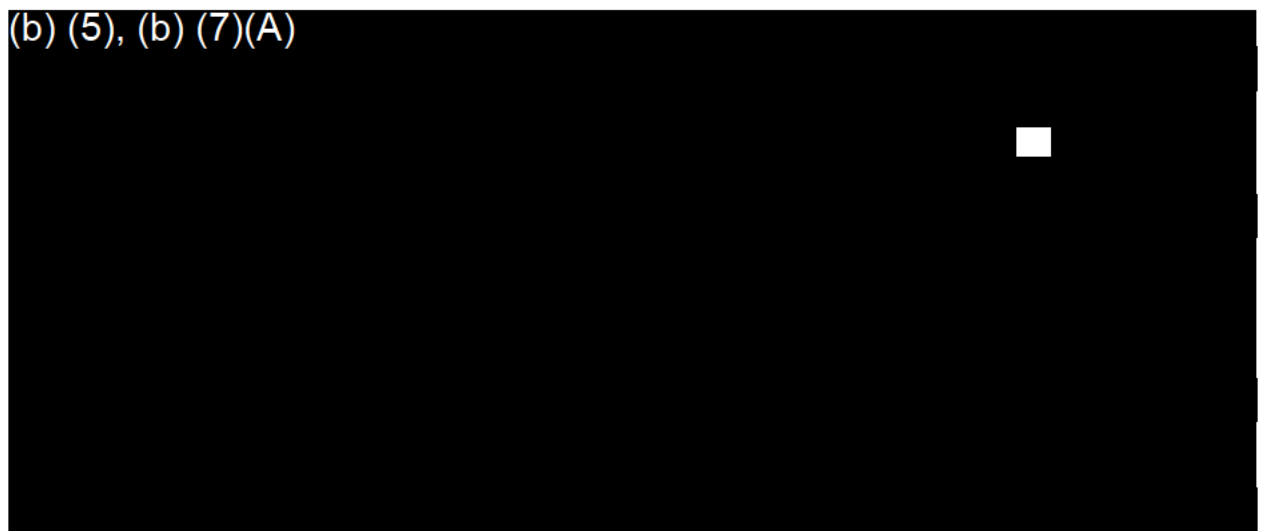
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(b) (5), (b) (7)(A)

B. (b) (5), (b) (7)(A)

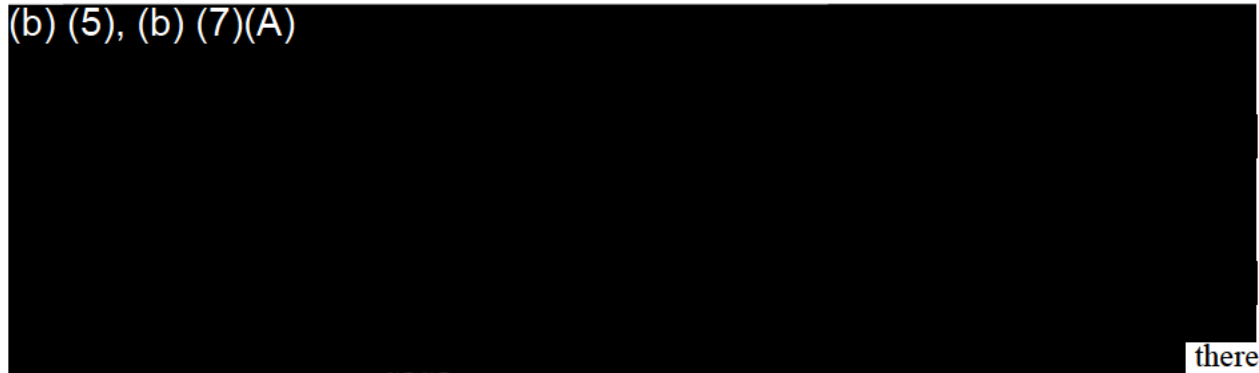
In addition to the government ethics regulations, we have also considered whether there are any legal ethics considerations that may raise recusal concerns in the court litigation. (b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

(b) (5), (b) (7)(A)

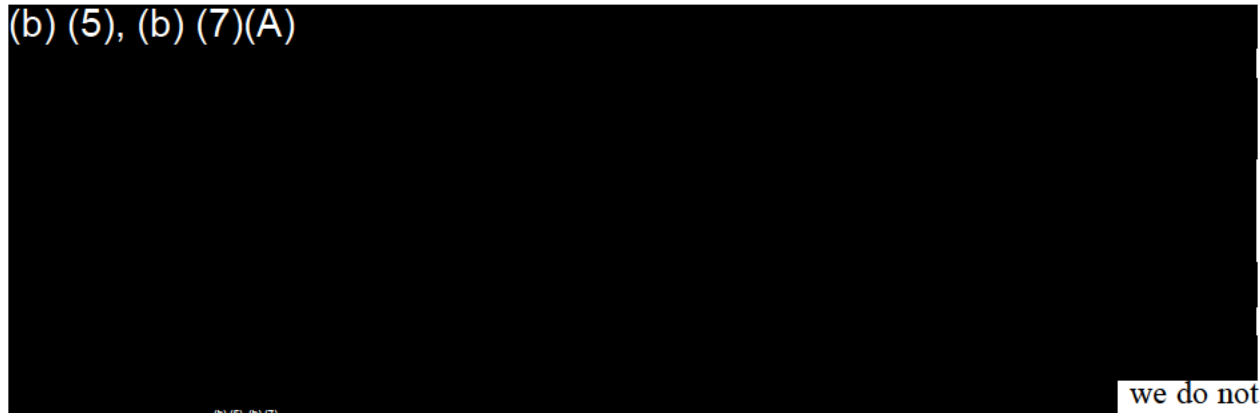
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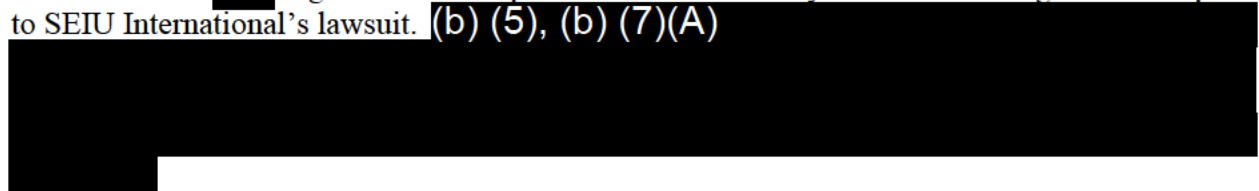


there are no ethics concerns under (b) (5), (b) (7) legal ethics rules that would prohibit her from participating in the Board's consideration of how to respond to SEIU International's lawsuit.

(b) (5), (b) (7)(A)

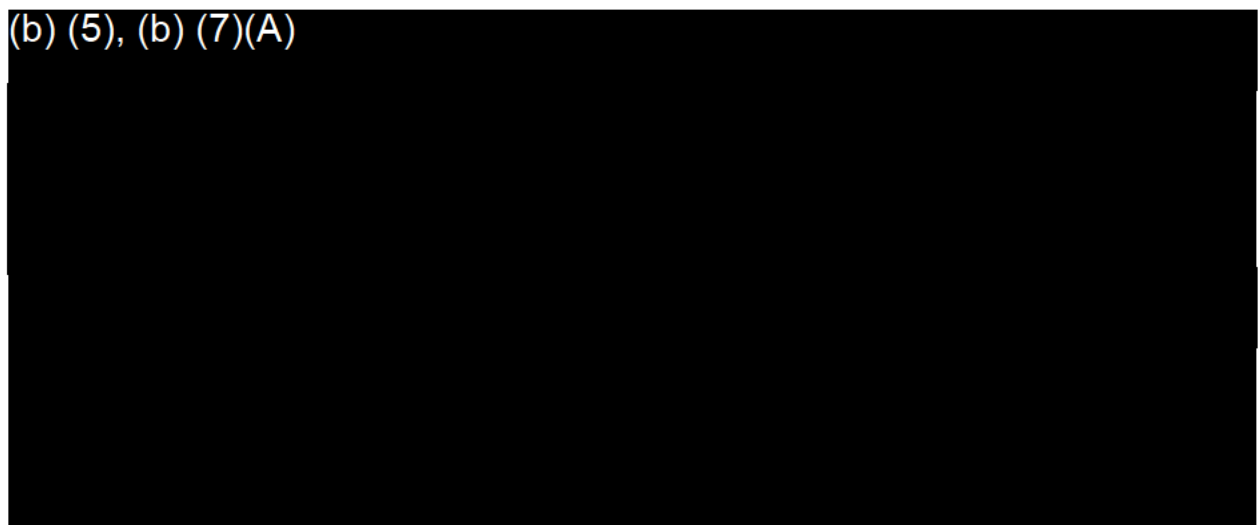


we do not believe that the (b) (5), (b) (7) legal ethics rules prohibit Member Prouty from considering how to respond to SEIU International's lawsuit. (b) (5), (b) (7)(A)




C. (b) (5), (b) (7)(A)


(b) (5), (b) (7)(A)



(b) (5), (b) (7)(A)

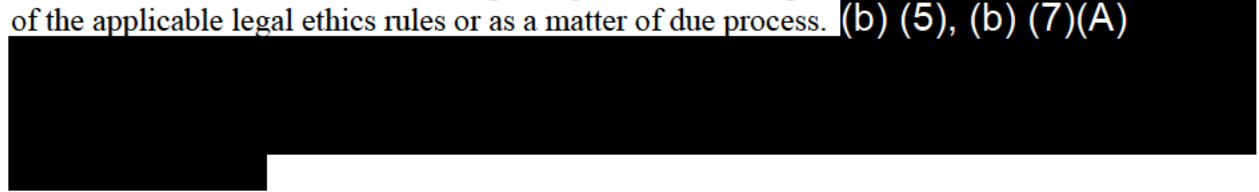


(b) (5), (b) (7)(A)



Conclusion

It is our determination that, Member Wilcox and Member Prouty do not have to recuse from the Board's consideration of how to respond to SEIU International's challenge to the Board's joint employer rulemaking based on 28 USC § 208 (the financial conflict of interest statute), Paragraph 2 of the Biden Ethics Pledge, or 5 C.F.R. § 502(a)(1) (covered relationships). We also recommend, for the reasons set forth in this memo, that Member Wilcox's and Member Prouty's participation in the litigation, including consideration of how to respond to the lawsuit, would not raise appearance concerns under the catch-all provision in 5 C.F.R. § 502(a)(2) should they want to do so. We also do not believe that their participation would be prohibited by the relevant provisions of the applicable legal ethics rules or as a matter of due process. (b) (5), (b) (7)(A)



cc: Roxanne Rothschild, Executive Secretary

Amanda Jaret, Chief Counsel to Member Wilcox

David Goldman, Chief Counsel to Member Prouty

Lara Zick, Deputy Chief Counsel to Member Prouty

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21
Date: Thursday, November 18, 2021 2:09:11 PM

Relevant to NLRB-2022-000150

From: Prouty, David M. <David.Prouty@nlrb.gov>
Sent: Wednesday, October 13, 2021 1:44 PM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Cc: Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: RE: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Thanks Lori. This was very clear, thorough and well-written. Much appreciated.

One infinitesimally small nit: I am inactive in Massachusetts (MA) rather than Maryland (MD).

From: Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Sent: Wednesday, October 13, 2021 11:31 AM
To: Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Cc: Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Subject: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Good Morning – I have attached a copy of our ethics memo that provides guidance as to whether Members Wilcox and Prouty may participate in the Board’s consideration of the lawsuit filed by SEIU International challenging the NLRB’s joint employer rule.

Please let us know if you have any questions.

Lori

Lori W. Ketcham

Associate General Counsel, Ethics

Designated Agency Ethics Official

National Labor Relations Board

1015 Half Street, S.E.

Washington, D.C. 20570

(202)273-2939

lori.ketcham@nlrb.gov

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En español: [@NLRBes](#)/[@NLRBGCes](#)

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21
Date: Thursday, November 18, 2021 2:06:15 PM

Relevant to NLRB-2022-000150

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Thursday, October 14, 2021 10:57 AM
To: Allen, Jamal <Jamal.Allen@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Cc: Burow, Kathy <Kathy.Burow@nlrb.gov>
Subject: RE: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Jamal-

Thank you so much for quick and of course, thorough response. I appreciate it and understand why you did not want to add to the already lengthy memo.

Gwynne

From: Allen, Jamal <Jamal.Allen@nlrb.gov>
Sent: Thursday, October 14, 2021 10:43 AM
To: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Cc: Burow, Kathy <Kathy.Burow@nlrb.gov>
Subject: RE: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Hello Member Wilcox, I can answer that question for you. (b) (5)

[REDACTED]

[REDACTED] New Jersey Rule of Professional Conduct 8.5(b)(1) states the following:

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5)

(b) (5) (b) (5)

(b) (5)

Please let us know if you have any other questions.

Sincerely,

Jamal M. Allen
Special Ethics Counsel

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>

Sent: Thursday, October 14, 2021 9:26 AM

To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>

Cc: Allen, Jamal <Jamal.Allen@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>

Subject: FW: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Lori—

Thank you to you and your team for a thorough and well-prepared memo. However, I had a quick question. The memo references that I am licensed in New Jersey, (b) (5)

I apologize in advance if I overlooked this information in the memo.

Thank you for entertaining my question.

Gwynne

From: Wilcox, Gwynne

Sent: Wednesday, October 13, 2021 11:46 AM

To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>

Cc: Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Allen, Jamal

<Jamal.Allen@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>

Subject: RE: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Lori-

Thank you for this ethics memo and I hope you managed to have a good vacation.

I will let you know if I have any questions.

Gwynne

From: Ketcham, Lori <Lori.Ketcham@nlrb.gov>

Sent: Wednesday, October 13, 2021 11:31 AM

To: Prouty, David M. <David.Prouty@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>

Cc: Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Burow, Kathy <Kathy.Burow@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>

Subject: SEIU v. NLRB (Mbr Wilcox Mbr. Prouty) 10.13.21

Good Morning – I have attached a copy of our ethics memo that provides guidance as to whether Members Wilcox and Prouty may participate in the Board’s consideration of the lawsuit filed by SEIU International challenging the NLRB’s joint employer rule.

Please let us know if you have any questions.

Lori

Lori W. Ketcham

Associate General Counsel, Ethics

Designated Agency Ethics Official

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En español: [@NLRBes](https://twitter.com/NLRBes)/[@NLRBGCes](https://twitter.com/NLRBGCes)

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: Agenda for tomorrow's Board meeting
Date: Thursday, November 18, 2021 2:06:48 PM

Relevant to NLRB-2022-000150

From: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Sent: Monday, October 18, 2021 11:06 AM
To: Prouty, David M. <David.Prouty@nlrb.gov>; Jacob, Fred <Fred.Jacob@nlrb.gov>
Cc: Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>
Subject: RE: Agenda for tomorrow's Board meeting

Fred-

I have reviewed the memorandum issued by Lori Ketcham's office with a follow up clarification regarding the *SEIU v NLRB* case. Since I have been cleared to participate in this pending matter by her office and I concur with their recommendation/advice, I would appreciate receiving a copy of the CCSLB's memorandum regarding this matter.

Thank you!

Gwynne

From: Prouty, David M. <[David.Prouty@nlrb.gov](#)>
Sent: Thursday, October 14, 2021 9:50 AM
To: Jacob, Fred <[Fred.Jacob@nlrb.gov](#)>
Cc: Goldman, David <[David.Goldman@nlrb.gov](#)>; Zick, Lara S. <[Lara.Zick@nlrb.gov](#)>; McFerran, Lauren <[Lauren.McFerran@nlrb.gov](#)>; Krafts, Andrew J. <[Andrew.Krafts@nlrb.gov](#)>; Ketcham, Lori <[Lori.Ketcham@nlrb.gov](#)>; Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>; Jaret, Amanda M. <[Amanda.Jaret@nlrb.gov](#)>; Ring, John <[John.Ring@nlrb.gov](#)>; Kaplan, Marvin E. <[Marvin.Kaplan@nlrb.gov](#)>
Subject: RE: Agenda for tomorrow's Board meeting

Fred: I have reviewed the memorandum issued yesterday by Lori Ketcham's office regarding my participation in the *SEIU v. NLRB* matter. Although it is not altogether clear whether I need to do so, I will state here for the record that I concur with their recommendation/advice that it is permissible for me to participate in the deliberations regarding this litigation. Therefore, please forward to me when appropriate the memorandum referenced below concerning the case. Thanks very much.

From: Jacob, Fred <[Fred.Jacob@nlrb.gov](#)>

Sent: Tuesday, October 12, 2021 3:19 PM

To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>

Cc: Carlton, Peter J. <Peter.Carlton@nlrb.gov>; Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>; Colwell, John F. <John.Colwell@nlrb.gov>; Gartner, Rachel <Rachel.Gartner@nlrb.gov>; Goldman, David <David.Goldman@nlrb.gov>; Heaney, Elizabeth A. <Elizabeth.Heaney@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Kraus, Grant <Grant.Kraus@nlrb.gov>; Murphy, James R. <James.Murphy@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>; Schoone-Jongen, Terence G. <Terence.Schoone-Jongen@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>; Rappaport, Steve <Steve.Rappaport@nlrb.gov>

Subject: RE: Agenda for tomorrow's Board meeting

Chairman McFerran and Members Kaplan, Ring, Wilcox, and Prouty:

In advance of tomorrow meeting, attached please find memoranda from CCSLB (b) (5)

[REDACTED]

Thanks,

Fred

From: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>

Sent: Tuesday, October 12, 2021 12:12 PM

To: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Colwell, John F. <John.Colwell@nlrb.gov>; Heaney, Elizabeth A. <Elizabeth.Heaney@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Murphy, James R. <James.Murphy@nlrb.gov>; Gartner, Rachel <Rachel.Gartner@nlrb.gov>; Ring, John <John.Ring@nlrb.gov>; Carlton, Peter J. <Peter.Carlton@nlrb.gov>; Kraus, Grant <Grant.Kraus@nlrb.gov>; Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>; Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Rappaport, Steve <Steve.Rappaport@nlrb.gov>; Prouty, David M. <David.Prouty@nlrb.gov>; Goldman, David <David.Goldman@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>

Cc: Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Jacob, Fred <Fred.Jacob@nlrb.gov>; Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>; Schoone-Jongen, Terence G. <Terence.Schoone-Jongen@nlrb.gov>; Leff, Jason <Jason.Leff@nlrb.gov>; Qureshi, Farah Z. <Farah.Qureshi@nlrb.gov>; Reardon, Leigh A. <Leigh.Reardon@nlrb.gov>; Carrasco, Nelson <Nelson.Carrasco@nlrb.gov>; Bryant, Amy <Amy.Bryant@nlrb.gov>; Barham, Jeffrey <Jeffrey.Barham@nlrb.gov>; Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>; Lesesne, Katherine <Katherine.Lesesne@nlrb.gov>

Subject: Agenda for tomorrow's Board meeting

All:

Attached is the agenda for tomorrow's weekly Board meeting.

Thank you,

Roxanne Rothschild

Executive Secretary

National Labor Relations Board

1015 Half Street SE, Office 5011, Washington, DC 20570

roxanne.rothschild@nrlb.gov | 202-273-2917

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: 2020.4.20 AFL-CIO-SEIU Request for Reconsideration and Postponement of Joint Employer Rule.pdf
Date: Thursday, November 18, 2021 2:12:57 PM
Attachments: [2020.4.20 AFL-CIO-SEIU Request for Reconsideration and Postponement of Joint Employer Rule.pdf](#)

Relevant to NLRB-2022-000150

From: Jacob, Fred <Fred.Jacob@nlrb.gov>
Sent: Wednesday, November 10, 2021 11:19 AM
To: Ketcham, Lori <Lori.Ketcham@nlrb.gov>; Allen, Jamal <Jamal.Allen@nlrb.gov>
Cc: McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Colwell, John F. <John.Colwell@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>
Subject: 2020.4.20 AFL-CIO-SEIU Request for Reconsideration and Postponement of Joint Employer Rule.pdf

Hi Lori and Jamal,

(b) (5)

[REDACTED]

(b) (5) so we would appreciate feedback at your earliest convenience. Thank you in advance for your guidance , and please let me know if you have any questions.

Best,

Fred

April 20, 2020

John F. Ring, Chairman
c/o Roxanne L. Rothschild, Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

RE: Request for Reconsideration of, and Postponement of, the Joint Employer Rule

Dear Chairman Ring:

We write on behalf of the AFL-CIO and its 55 affiliated national and international unions and the Service Employees International Union and its affiliated local unions, together representing 15 million working women and men, many of whom are essential workers on the front lines of the fight against Coronavirus, to request that the Board (1) reconsider its joint employer rule's exclusion of health and safety measures from among the "essential" terms and conditions of employment and (2) postpone the effective date of the rule, which is currently set to take effect April 27, 2020, until July 31, 2020. *See* 85 Federal Register 11,184 (February 26, 2020). The current public health crisis that is exposing essential workers, particularly in healthcare, to grave workplace dangers mandates these actions.

We request reconsideration of one crucial aspect of the final joint employer rule: the decision to not include safety and health measures among the "essential" terms and conditions of employment control over which is directly relevant to joint employer status. *See* new 29 CFR § 103.40(b). That means employees may not be able to bargain with the entity that controls the measures that ensure, or fail to ensure, their health and safety. That entity may be a hospital, for example, that controls health and safety measures for employees of an agency supplying additional nurses to care for patients at the hospital. Indeed, the preamble to the rule expressly and repeatedly states that "contractual safety . . . standards . . . do not support a finding of joint-employer status." 85 Federal Register 11,187. *See also id.* at 11,194 ("contractual provisions requiring workplace safety practices . . . generally will not make joint-employer status more likely under the Act"). The error of this aspect of the final joint employer rule has recently become tragically evident.

As the Board noted in its explanation of the final joint employer rule, 85 Fed. Reg. at 11,205, the Board received comments suggesting that safety and health measures should be included among the essential terms and conditions of employment control of which demonstrates joint employer status. In particular, the comments filed on behalf of 1199SEIU United Healthcare Workers East (1199SEIU), cited at footnote 194 of the explanation for the final rule, presciently described examples of the "essential" nature of safety and health measures:

To be clear, a hospital controls the movement of psychiatric patients within its walls and the ratio of contracted staff assigned to patients who might present a hazard to themselves or caregivers. A nursing home orders the supplies used by contracted staff tasked

with disposal of bio-medical waste. And a homecare agency decides the acuity of patients to which it assigns contracted home-health aides. The proposed rule takes far too narrow a view of these essential terms and conditions of employment. It is ill-advised to exclude necessary parties from bargaining obligations over terms and conditions such as these, especially when worker health and welfare and patient care are at stake.

In the final joint employer rule, the Board rejected the logic of those comments. The Board “expanded” but also “made exclusive” a list of essential terms and conditions of employment that did not include safety and health measures. The essential terms are limited to “wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.” 85 Fed. Reg. at 11,205. The Board offered no specific explanation for failing to include safety and health measures on this list; it offered only generally that: “The Act’s purpose of promoting collective bargaining is best served by a joint-employer standard that places at the bargaining table only those entities that control terms that are *most material* to collective bargaining.” *Id.* (emphasis supplied).

The Coronavirus pandemic has only confirmed the centrality and materiality to employees and employers of safety and health matters. For example, for temporary workers who are assigned by their temporary agency employer to work in a hospital where the hospital is the entity determining access to personal protective equipment and establishing the protocols for employee exposure to Coronavirus-infected patients, the hospital’s control of those and other safety and health measures is not just among those “most material” to bargaining, it is, quite literally, a matter of life and death. Indeed, the concerns in 1199SEIU’s comment have been fully borne out by the pandemic. 1199SEIU is headquartered in New York City, the current epicenter of the country’s COVID-19 emergency. 1199SEIU has learned from its represented employees that temporary employees’ core safety and health terms—such as the access to and rules governing utilization of personal protective equipment, prophylactic procedures within facilities caring for infected patients and residents, and the procedures for interacting with confirmed COVID-19 patients—are being dictated not by their agency employers but by the administrators of the facilities where they are working (the “user employer” in the final joint employer rule’s language). These employees’ experiences drive home how control over health and safety measures goes to the heart of an employee’s working life.

Moreover, workers in all industries, not just the health care workers described above, are currently grappling with safety and health matters central to their work lives. Poultry workers, fast food workers, grocery store employees, airport workers, manufacturing employees, truck drivers, building security guards, maintenance employees, and others are all facing grave questions about how to perform their essential jobs while limiting their exposure to the Coronavirus and maintaining safe practices (social distancing, wearing protective masks and gloves, etc.) to the extent possible. Temporary and agency workers labor in each of those industries. Workers in each of those industries have gotten sick. And workers in each of those industries have died.

Finally, as the Board's decisions over the years classifying safety and health measures as mandatory subjects of bargaining demonstrate, there is a long history of collective bargaining over such subjects and established case law to guide the parties in addressing these matters. *See, for example, Gulf Power Co.*, 156 NLRB 622 (1966), *enf'd*, 384 F.2d 822 (5th Cir. 1967); *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), *enf'd*, 778 F.2d 49 (1st Cir. 1985). That lengthy history exists precisely because health and safety measures are essential to workers' livelihoods and lives.

The record before the Board in the rulemaking proceeding, examined in light of the public health crisis the nation now confronts, calls for reconsideration of the Board's determination that safety and health matters are not "essential" terms and conditions of employment.

In addition, the Board should, at a minimum, delay the effective date of the joint employer rule consistent with the Board's April 10, 2020, postponement of the effective date of the "Representation-Case Procedures; Election Bars; Proof of Majority Support in Construction-Industry Collective Bargaining Relationships" ("representation issues") rule. As the Board's announcement stated, the Board postponed the representation issues rule "to allow the Board's employees and stakeholders to focus on continuity of their operations during the national emergency concerning the Coronavirus pandemic during the next several months, rather than on implementing and understanding the Board's new rule." 85 Federal Register 20,156 (April 10, 2020). The pandemic continues to rage; the Board's offices remain essentially closed to the public; the regional and headquarters staffs are teleworking; the Agency faces challenges in processing existing cases on its docket; and unprecedented public health concerns are requiring businesses and unions to alter their normal operations radically. Under these circumstances, the same pragmatic rationale supporting the postponement of the representation issues rule—including the need of the regulated community to focus on the "continuity of their operations"—counsels postponing the joint employer rule's effective date as well. We urge postponement until July 31, 2020, so that the two rules will become effective on the same date.

We urge the Board both to engage in the essential reconsideration and delay the effective date of the final joint employer rule.

Respectfully submitted,

s/Craig Becker
Craig Becker
General Counsel
AFL-CIO
815 16th St., N.W.
Washington, D.C. 20006
(202) 637-5310
cbecker@aflcio.org

s/Nicole Berner
Nicole Berner
General Counsel
SEIU
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 730-7383
nicole.berner@seiu.org

From: [Ketcham, Lori](#)
To: [Burow, Kathy](#)
Subject: FW: Amazon.com Services LLC - Case 29-CA-261755 - Special Appeal
Date: Thursday, November 18, 2021 3:11:47 PM

Relevant to NLRB-2022-000150

From: Burow, Kathy <Kathy.Burow@nlrb.gov>
Sent: Wednesday, November 10, 2021 6:16 PM
To: Wilcox, Gwynne <Gwynne.Wilcox@nlrb.gov>
Cc: Jaret, Amanda M. <Amanda.Jaret@nlrb.gov>; Ketcham, Lori <Lori.Ketcham@nlrb.gov>
Subject: RE: Amazon.com Services LLC - Case 29-CA-261755 - Special Appeal

Good Evening Member Wilcox,
Because you do not currently own Amazon, there would be no requirement to recuse from Case 29-CA-261755 under 18 USC 208.

Hope you enjoy the conference!
Kathy

From: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>
Sent: Tuesday, November 9, 2021 7:55 PM
To: Burow, Kathy <[Kathy.Burow@nlrb.gov](#)>
Cc: Jaret, Amanda M. <[Amanda.Jaret@nlrb.gov](#)>
Subject: FW: Amazon.com Services LLC - Case 29-CA-261755 - Special Appeal

Kathy--

I hope you are doing well.

I am forwarding this email that I received regarding Amazon Services. I have divested of this stock

(b) (5)

Thanks for your input. I have copied Amanda on this email so she is aware of my inquiry. I am flying to the ABA conference tomorrow and my flight leaves at 12:15 pm.

Gwynne

From: Jaret, Amanda M. <[Amanda.Jaret@nlrb.gov](#)>
Sent: Tuesday, November 9, 2021 6:05 PM
To: Wilcox, Gwynne <[Gwynne.Wilcox@nlrb.gov](#)>
Cc: Rappaport, Steve <[Steve.Rappaport@nlrb.gov](#)>
Subject: Amazon.com Services LLC - Case 29-CA-261755 - Special Appeal

Hi Gwynne,

I'm passing along a screen that Jenny prepared in a Solicitor case involving a special appeal filed by Amazon.com Services LLC in Case 29-CA-261755. The appeal addresses several subpoena-related issues that ultimately bear on the allegation at issue in this case (that the Respondent unlawfully terminated an employee for engaging in protected concerted activity related to worker safety during the COVID-19 pandemic). The Charging Party is an individual (b) (5)

Here's Jenny's screen:

(b) (5)

(b) (5)



(b) (5)



Thanks, and please let me know if you have any questions and how you would like to vote,
Amanda

Amanda Jaret (they/them or she/her)
Chief Counsel, Member Gwynne A. Wilcox
National Labor Relations Board
1015 Half Street SE, Washington, DC 20570
(202) 273-1080